

§ 349.2

Administration (MARAD), under authority delegated by the Secretary of Transportation to the Maritime Administrator, certifies, upon application, that certain merchant seamen are entitled to reemployment rights and other benefits after completion of their service on vessels used by the United States for a war, armed conflict, national emergency or maritime mobilization need. It also describes the form of administrative assistance MARAD will provide to the seamen certified.

§ 349.2 Application for certification.

Pursuant to 46 App. U.S.C. 1132, an individual may submit an application to MARAD not later than 45 days after the date the individual completes the period of employment described in § 349.3 of this part.

§ 349.3 Certification criteria.

The Administrator shall apply the following criteria for certifying that an individual merchant seaman is entitled to reemployment rights and other benefits substantially equivalent to the rights and benefits provided by chapter 43 of title 38, United States Code, for any member of a Reserve Component of the Armed Forces of the United States who is ordered to active duty. It shall be the responsibility of each applicant for certification to submit relevant documentation to MARAD, Office of Maritime Labor, Training, and Safety, MAR-250, 400 Seventh St., S.W., Room 7302, Washington, D.C. 20590, establishing that—

(a) *Employment as merchant seaman.* The applicant was employed after October 8, 1996, in the activation or operation of a vessel—

(1) in the National Defense Reserve Fleet maintained by MARAD under authority of section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744) in a period in which that vessel was in use or being activated for use under 50 U.S.C. App. 1744(b);

(2) that is requisitioned under section 902 of the Act (46 App. U.S.C. 1242); or

(3) that is owned, chartered, or controlled by the United States and used by the United States for a war, armed conflict, national emergency, or maritime mobilization need (including for training purposes or testing for readi-

46 CFR Ch. II (10–1–06 Edition)

ness and suitability for mission performance).

(b) *Seaman credentials.* During the period of employment described in paragraph (a) of this section, the seaman possessed a valid license, certificate of registry, or merchant mariner's document issued under chapter 73 (as applicable) of title 46, United States Code, as required by 46 App. U.S.C. 1132(c).

(c) *Additional information.* If applicable, periods of hospitalization, convalescence, illness, injury, shipwreck or detention beyond the mariner's control were incurred in, or aggravated during, the performance of employment described in § 349.3(a).

§ 349.4 Decision on application.

MARAD will issue or deny certification (accompanied by an explanation in writing) to each applicant not later than 20 days after receipt of an application for certification.

§ 349.5 Reemployment rights and benefits.

(a) *General.* An individual who is absent from a position of employment, in the private or public (federal, state or local government) sector, because of temporary employment of any duration described in § 349.3(a), shall be entitled to reemployment rights and benefits upon completion of the temporary employment as a merchant seaman.

(b) *Superior claims.* Pursuant to 38 U.S.C. 4312(g), the right of a person to reemployment shall not entitle such person to retention preference or displacement rights over any person with a superior claim under the provisions of title 5, United States Code, relating to veterans and other preference eligibles.

(c) *Notification of employer.* Any person who is absent from a position of employment by reason of service as described in § 349.3(a) shall be entitled to reemployment rights and benefits provided in § 349.3(e) if—

(1) The person has given advance written or verbal notice of such service to such person's employer, unless giving notice is precluded by military necessity, under regulations prescribed by the Secretary of Defense, or, under